

SENATE BILL

No. 4

Introduced by Senator Chesbro

December 5, 2003

An act to amend Sections 99006 and 99008 of, and to add Title 18 (commencing with Section 99050) to, the Government Code, relating to fiscal recovery financing, by providing the funds necessary therefor through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 4, as introduced, Chesbro. Deficit recovery bonds.

Existing provisions of the California Constitution prohibit the creation by the Legislature of debts in excess of \$300,000 except for a single object or work specified in a law creating the debt, which is approved by a $\frac{2}{3}$ vote of the members of each house of the Legislature and approved by the people by a majority of the votes cast at a general or direct primary election.

This bill would enact the Deficit Recovery General Obligation Bond Act of 2004, which, if adopted, would authorize the issuance, pursuant to the State General Obligation Bond Law, of bonds in an amount not to exceed \$15,000,000,000 for purposes of financing the accumulated state budget deficit, as defined. The bill would also provide that the bonds shall be secured by a pledge of revenues in the Fiscal Recovery Fund from designated sales and use tax revenues.

The bill would provide for submission of the bond act to the voters at the March 2, 2004, statewide primary election. The provisions of the bill described above would become operative only if 2 specified

constitutional amendments are submitted to and approved by the voters at the March 2, 2004, statewide primary election.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 99006 of the Government Code is
2 amended to read:

3 99006. (a) The Director of Finance shall, as chairperson of
4 the authority, take all actions necessary to have included in the
5 annual Governor's Budget for each fiscal year in which the Fiscal
6 Recovery Fund is in existence and any bonds or ancillary
7 obligations remain outstanding, an appropriation of the special
8 sales tax revenues received in that fiscal year to pay those
9 obligations. The director shall further use his or her best efforts to
10 have included in the annual Budget Bill or another bill separate
11 from the annual Budget Bill, for each fiscal year in which the
12 Fiscal Recovery Fund is in existence and any bonds or ancillary
13 obligations remain outstanding, an appropriation of the special
14 sales tax revenues received in that fiscal year for the purposes of
15 this title. The director shall notify the trustee and, if the trustee is
16 not the Treasurer, notify the Treasurer, in each applicable year of
17 the actions taken pursuant to this subdivision, including providing
18 copies of the Governor's Budget and either the annual Budget Bill
19 or other bill proposing an appropriation of the special sales tax
20 revenue.

21 (b) The Director of Finance, ~~as chairperson of the authority,~~
22 shall notify the Treasurer, ~~the trustee,~~ and the board ~~upon the~~
23 ~~earliest to occur~~ when, in each case, (1) and (2) of the following
24 events *have occurred*:

25 (1) *Any of the following has occurred:*

26 (A) All bonds *issued pursuant to this title and all related*
27 *ancillary obligations outstanding* have been paid or retired.

28 ~~(2)—~~

29 (B) Payment of the principal of and interest on all bonds *issued*
30 *pursuant to this title* has been irrevocably provided for pursuant to

the indenture and no bonds are deemed “outstanding” pursuant to the indenture.

~~(3)~~

(C) The Fiscal Recovery Fund holds sufficient funds to pay the principal of, and interest to final maturity on, all bonds *issued pursuant to this title that are* outstanding, if those funds were appropriated for that purpose by the Legislature.

(D) *No bonds were issued pursuant to this title and the Director of Finance, as chairperson of the authority, announces that no bonds will be issued pursuant to this title.*

(2) *Any of the following has occurred:*

(A) *All bonds issued pursuant to Title 18 (commencing with Section 99050) and all ancillary obligations relating thereto have been paid or retired.*

(B) *Payment of the principal of and interest on all of those bonds identified in subparagraph (A) has been irrevocably provided for pursuant to the related resolution and no bonds are deemed “outstanding” pursuant to that resolution.*

(C) *The Fiscal Recovery Fund holds sufficient funds to pay the principal of, and interest to final maturity on, all of the bonds identified in subparagraph (A) that are outstanding.*

(D) *The Deficit Recovery General Obligation Bond Act of 2004 was not approved by voters.*

(c) Notwithstanding any other provision of law, Section 5924 shall not apply to payment of any fees or costs of any ancillary obligations entered into by the authority or the Treasurer in connection with any bonds issued pursuant to this title.

(d) *For purposes of subdivision (d) of Section 6051.5, and subdivision (d) of Section 6201.5, of the Revenue and Taxation Code, and Section 99010 of this code, notification pursuant to subdivision (b) shall be deemed to be given by the Director of Finance only when the notifications described in both paragraph (1) and paragraph (2) of subdivision (b) have been given.*

SEC. 2. Section 99008 of the Government Code is amended to read:

99008. (a) The Fiscal Recovery Fund is hereby created as a special fund in the State Treasury.

(b) Moneys in the Fiscal Recovery Fund shall be invested in the Surplus Money Investment Fund, *except as otherwise provided in a resolution adopted pursuant to Title 18 (commencing with*

1 *Section 99050) of the Government Code*, and any income from that
2 investment shall be credited to the Fiscal Recovery Fund.

3 (c) (1) Except for funds appropriated pursuant to subdivision
4 (d), amounts in the Fiscal Recovery Fund, together with earnings
5 thereon, shall be available solely for the purposes set forth in
6 subdivision (c) of Section 99002 upon appropriation by the
7 Legislature in each fiscal year. Upon an appropriation, if any, by
8 the Legislature *for the purposes specified in subdivision (c) of*
9 *Section 99002* in a fiscal year, for the balance of that fiscal year all
10 appropriated moneys then held or to be received in the Fiscal
11 Recovery Fund *for that purpose* shall constitute available revenues
12 and shall be disbursed to the trustee not less frequently than once
13 per month. Available revenues shall belong to the authority,
14 absolutely and unconditionally, and without any right of setoff,
15 recoupment, or counterclaim.

16 (2) *Paragraph (1) and subdivision (d) shall become*
17 *inoperative on the date on which all bonds and ancillary*
18 *obligations issued pursuant to this title are not outstanding, as*
19 *certified by the Director of Finance pursuant to paragraph (1) of*
20 *subdivision (b) of Section 99006. On and after the date on which*
21 *paragraph (1) and subdivision (d) become inoperative, the Fiscal*
22 *Recovery Fund shall be used solely for the purpose set forth in*
23 *Section 99072 and, as provided in Section 99072, shall be*
24 *continuously appropriated for that purpose.*

25 (d) Notwithstanding Section 13340, an amount not to exceed
26 one million dollars (\$1,000,000) per fiscal year is hereby
27 continuously appropriated from the Fiscal Recovery Fund to the
28 authority, without regard to fiscal years, sufficient to pay
29 administrative costs as approved by the Director of Finance.

30 SEC. 3. Title 18 (commencing with Section 99050) is added
31 to the Government Code, to read:

32
33 TITLE 18. DEFICIT RECOVERY GENERAL
34 OBLIGATION BOND ACT OF 2004

35
36 CHAPTER 1. GENERAL PROVISIONS

37
38 99050. (a) This title shall be known and may be cited as the
39 Deficit Recovery General Obligation Bond Act of 2004.

(b) The Legislature finds and declares that it is essential to the public welfare that an efficient, equitable, and alternative source of funding be established in order to preserve public education and critical health and safety programs that otherwise could not be funded in light of the accumulated state budget deficit, and that securing the availability of the proceeds of the bonds proposed to be issued and sold pursuant to this title is the most efficient, equitable, and economical means available.

99051. As used in this title, the following terms have the following meanings:

(a) (1) “Accumulated state budget deficit” means the following amounts:

(A) The estimated negative balance of the Special Fund for Economic Uncertainties arising on or before June 30, 2004, excluding the effect of the estimated amount of net proceeds of any bonds issued or to be issued pursuant to Title 17 (commencing with Section 99000) or this title.

(B) Other General Fund obligations incurred by the state prior to June 30, 2004, to the extent not included in that estimated negative balance.

(2) The amount of the accumulated state budget deficit shall be reduced by the amount of the net proceeds, if any, paid to the Public Employees’ Retirement System from the proceeds of bonds issued pursuant to the California Pension Obligation Financing Act (Chapter 7 (commencing with Section 16910) of Part 3 of Division 4 of Title 2).

(3) Each of the amounts referred to in paragraphs (1) and (2) shall be as certified by the Director of Finance.

(b) “Ancillary obligation” means an obligation of the state entered into in connection with any bonds issued under this title, including the following:

(1) A credit enhancement or liquidity agreement, including any credit enhancement or liquidity agreement in the form of bond insurance, letter of credit, standby bond purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement.

(2) A remarketing agreement.

(3) An auction agent agreement.

(4) A broker-dealer agreement or other agreement relating to the marketing of the bonds.

1 (5) An interest rate or other type of swap or hedging contract.

2 (6) An investment agreement, forward purchase agreement, or
3 similar structured investment contract.

4 (c) “Committee” means the Deficit Recovery Financing
5 Committee created pursuant to Section 99055.

6 (d) “Fund” means the Deficit Recovery Fund created pursuant
7 to Section 99060.

8 (e) “Resolution” means any resolution, trust agreement,
9 indenture, certificate, or other instrument authorizing the issuance
10 of bonds pursuant to this title and providing for their security and
11 repayment.

12 (f) “Trustee” means the Treasurer or a bank or trust company
13 within or without the state acting as trustee for any issue of bonds
14 under this title and, if there is more than one issue of bonds, the
15 term means the trustee for each issue of bonds, respectively. If
16 there are cotrustees for an issue of bonds, “trustee” means those
17 cotrustees collectively.

18
19 CHAPTER 2. DEFICIT RECOVERY FINANCING COMMITTEE
20

21 99055. (a) Solely for the purpose of authorizing the issuance
22 and sale pursuant to the State General Obligation Bond Law of the
23 bonds authorized by this title and the making of those
24 determinations and the taking of other actions as are authorized by
25 this title, the Deficit Recovery Financing Committee is hereby
26 created. For purposes of this title, the Deficit Recovery Financing
27 Committee is “the committee” as that term is used in the State
28 General Obligation Bond Law (Chapter 4 (commencing with
29 Section 16720) of Part 3 of Division 4 of Title 2).

30 (b) The committee consists of all of the following members or
31 their designated representatives:

32 (1) The Treasurer.

33 (2) The Controller.

34 (3) The Director of Finance.

35 (4) The Secretary of Business, Transportation and Housing.

36 (5) The Director of General Services.

37 (c) The Legislature finds and declares that each member of the
38 committee has previously acted as a member of a similar finance
39 committee.

1 (d) A majority of the members of the committee shall constitute
2 a quorum of the committee and may act for the committee.

3 (e) The Treasurer shall serve as chairperson of the committee.
4

5 CHAPTER 3. DEFICIT RECOVERY FUND
6

7 99060. (a) The proceeds of bonds issued and sold pursuant to
8 this title shall be deposited in the Deficit Recovery Fund, which is
9 hereby established in the State Treasury.

10 (b) Moneys in the fund shall be invested in the Surplus Money
11 Investment Fund, and any income from that investment shall be
12 credited to the fund.

13 (c) Except for amounts necessary to pay costs of issuance,
14 administrative costs, and any other costs payable in connection
15 with the bonds, and to retire or refund bonds issued and sold
16 pursuant to this title or bonds issued and sold under Title 17
17 (commencing with Section 99000), as these amounts are
18 determined by the committee, the remaining balance of the fund
19 shall be transferred to the General Fund to fund the purposes set
20 forth in this title.

21 99062. Out of the first money realized from the sale of bonds
22 as provided in this chapter, there shall be redeposited in the
23 General Obligation Bond Expense Revolving Fund, established
24 by Section 16724.5, the amount of all expenditures made for
25 purposes specified in that section, and this money may be used for
26 the same purpose and repaid in the same manner whenever
27 additional bond sales are made.

28 99064. The proceeds of the bonds issued and sold pursuant to
29 this chapter shall be available for the purpose of providing an
30 efficient, equitable, and economical means of doing both of the
31 following:

32 (a) Funding the accumulated budget deficit, which may be
33 accomplished in part by refunding or repaying bonds issued
34 pursuant to Title 17 (commencing with Section 99000).

35 (b) Paying costs relating to the issuance of bonds under this
36 title, including, but not limited to, providing reserves, capitalized
37 interest, and the costs of obtaining or entering into any ancillary
38 obligation, costs associated with the repayment or refunding of the
39 fiscal recovery bonds issued pursuant to Title 17 (commencing

1 with Section 99000), and administrative and other costs associated
2 with implementing the purposes of this title.

3
4 CHAPTER 4. BOND PROVISIONS
5

6 99065. (a) Bonds in the total amount of fifteen billion dollars
7 (\$15,000,000,000), not including the amount of any refunding
8 bonds issued in accordance with Section 99075, or so much thereof
9 as is necessary, may be issued and sold to provide a fund to be used
10 for carrying out the purposes expressed in this title and to
11 reimburse the General Obligation Bond Expense Revolving Fund,
12 pursuant to Section 16724.5. The bonds, when sold, shall be and
13 constitute a valid and binding obligation of the State of California,
14 and the full faith and credit of the State of California is hereby
15 pledged for the punctual payment of both principal of, and interest
16 on, the bonds as the principal and interest become due and payable.
17 Additionally, the bonds, when sold, shall be secured by a pledge
18 of revenues and any other amounts in the Fiscal Recovery Fund
19 created pursuant to Section 99008. The bonds may be secured by
20 different lien priorities on amounts in the Fiscal Recovery Fund.

21 (b) Pursuant to this section, the Treasurer shall sell the bonds
22 authorized by the committee. The bonds shall be sold upon the
23 terms and conditions specified in a resolution to be adopted by the
24 committee pursuant to Section 16731 and Section 99070.
25 Whenever the committee deems it necessary for an effective sale
26 of the bonds, the committee may authorize the Treasurer to sell any
27 issue of bonds at less than their par value. Notwithstanding Section
28 16754.3, the discount with respect to any issue of the bonds shall
29 not exceed 3 percent of the par value thereof, net of any premium.

30 99066. The bonds authorized by this title shall be prepared,
31 executed, issued, sold, paid, and redeemed as provided in the State
32 General Obligation Bond Law (Chapter 4 (commencing with
33 Section 16720) of Part 3 of Division 4 of Title 2), and all of the
34 provisions of that law, except subdivisions (a) and (b) of Section
35 16727 or any other provision in that law that is inconsistent with
36 the terms of this title, apply to the bonds and to this title and are
37 hereby incorporated in this title as though set forth in full in this
38 title.

1 99067. For purposes of this title, the Department of Finance
2 is designated the “board” as that term is used in the State General
3 Obligation Bond Law.

4 99069. Notwithstanding any other provision of this title, or of
5 the State General Obligation Bond Law, if the Treasurer sells
6 bonds pursuant to this title that include a bond counsel opinion to
7 the effect that the interest on the bonds is excluded from gross
8 income for federal tax purposes subject to designated conditions,
9 the Treasurer may maintain separate accounts for the bond
10 proceeds invested and for the investment earnings on those
11 proceeds, and may use or direct the use of those proceeds or
12 earnings to pay any rebate, penalty, or other payment required
13 under federal law or take any other action with respect to the
14 investment and use of those bond proceeds that is required or
15 desirable under federal law in order to maintain the tax-exempt
16 status of those bonds and to obtain any other advantage under
17 federal law on behalf of the funds of this state.

18 99070. (a) (1) The committee shall determine whether or
19 not it is necessary or desirable to issue bonds authorized pursuant
20 to this title in order to carry out the purposes of this title and, if so,
21 the amount of bonds to be issued and sold, the times at which the
22 proceeds of the bonds authorized by this title shall be required to
23 be available, and those other terms and conditions for the bonds
24 authorized by this title as it shall determine necessary or desirable.

25 (2) In addition to all other powers specifically granted in this
26 title and the State General Obligation Bond Law, the committee
27 may do all things necessary or convenient to carry out the powers
28 and purposes of this title, including the approval of any indenture
29 and any ancillary obligation relating to those bonds, and the
30 delegation of necessary duties to the Treasurer, as chairperson, and
31 as agent for sale of the bonds.

32 (3) The committee shall determine the amount of the bonds to
33 be issued so that the net proceeds of the bonds issued to fund the
34 accumulated budget deficit, when added to the net proceeds of any
35 bonds issued pursuant to Title 17 (commencing with Section
36 99000) for that purpose, exclusive of bonds issued pursuant to this
37 title for the purpose of refunding bonds issued pursuant to this title
38 or Title 17 (commencing with Section 99000), will not exceed
39 \$15,000,000,000 in the aggregate. Nothing in this section shall be
40 construed to limit the ability of the committee to authorize the



1 issuance of any amount of bonds that it shall determine necessary
2 or appropriate to accomplish the purposes of this title, including
3 the refunding or redemption of the bonds issued pursuant to Title
4 17 (commencing with Section 99000), subject to the limit on the
5 total amount of bonds set forth in Section 99065.

6 (b) Successive issues of bonds may be authorized and sold to
7 carry out those actions progressively, and it is not necessary that
8 all of the bonds authorized to be issued be sold at any one time. In
9 addition to all other powers specifically granted in this title and the
10 State General Obligation Bond Law, the committee may do all
11 things necessary or convenient, including the delegation of
12 necessary duties to the Treasurer, as chairperson, and as agent for
13 sale of the bonds, to carry out the powers and purposes of this title.

14 99071. The principal of and interest on the bonds and the
15 payment of any ancillary obligations shall be payable from and
16 secured by a first lien upon amounts in the Fiscal Recovery Fund
17 established pursuant to Section 99008. To the extent that moneys
18 in the Fiscal Recovery Fund are deemed insufficient to make these
19 payments, pursuant to an estimate certified by the Director of
20 Finance and approved by the committee, there shall be collected
21 each year and in the same manner and at the same time as other
22 state revenue is collected, in addition to the ordinary revenues of
23 the state, a sum in an amount required to pay the principal of, and
24 interest on, the bonds and the payment of any ancillary obligations
25 for which payment is authorized by this title and for which the full
26 faith and credit of the state has been pledged. It is the duty of all
27 officers charged by law with any duty in regard to the collection
28 of the revenue to do and perform each and every act that is
29 necessary to collect that additional sum.

30 99072. (a) Notwithstanding Section 13340, there is hereby
31 continuously appropriated from the Fiscal Recovery Fund
32 established pursuant to Section 99008 an amount that will equal
33 the total of the following:

34 (1) The sum annually necessary to pay the principal of, and
35 interest on, bonds issued and sold as described in Section 99070,
36 as the principal and interest become due and payable, together with
37 any amount necessary to satisfy any reserve requirement in the
38 resolution.

39 (2) The sum necessary to pay any ancillary obligations entered
40 into in connection with the bonds.

(3) The sum necessary to carry out Section 99073, appropriated without regard to fiscal years.

(4) Any trustee and other administrative costs incurred in connection with servicing the bonds and ancillary obligations.

(b) Notwithstanding Section 13340, if the funds appropriated by subdivision (a) are estimated to be insufficient to meet the requirement specified in paragraphs (1) to (4), inclusive, of subdivision (a), as approved pursuant to Section 99071, there is hereby continuously appropriated from the General Fund, for the purposes of this chapter, an amount that will provide sufficient revenues to meet whatever requirements specified in paragraphs (1) to (4), inclusive, of subdivision (a) cannot be met from revenues appropriated from the Fiscal Recovery Fund.

(c) The sales and use tax revenues received pursuant to Sections 6051.5 and 6201.5 of the Revenue and Taxation Code and deposited into the Fiscal Recovery Fund are hereby irrevocably pledged to the payment of principal and interest on the debt issued pursuant to this title. The Legislature may elect to deposit additional revenues in the Fiscal Recovery Fund.

99074. All money deposited in the fund that is derived from accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the Fiscal Recovery Fund as a credit to expenditures for bond interest.

99075. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2, which is a part of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of the bonds described in this title shall include approval of the issuance of any bonds issued to refund any bonds originally issued under this title or any previously issued refunding bonds.

99076. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this title are not “proceeds of taxes” as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

99077. The state hereby pledges and agrees with the holders of any bonds issued pursuant to this title that it will not reduce the rate of imposition of either of the taxes imposed pursuant to Sections 6051.5 and 6201.5 of the Revenue and Taxation Code, which generate the revenue deposited in the Fiscal Recovery Fund.

SEC. 4. Sections 1, 2, and 3 of this act shall take effect upon the adoption by the voters of the Deficit Recovery General Obligation Bond Act of 2004, as set forth in Section 3 of this act.

SEC. 5. (a) Notwithstanding the requirements of Sections 9040, 9043, 9044, 9061, and 9082 of the Elections Code or any other provision of law, the Secretary of State shall submit Section 3 of this act to the voters at the March 2, 2004, statewide primary election.

(b) Notwithstanding Section 13115 of the Elections Code, Section 3 of this act and any other measure placed on the ballot by the Legislature for the March 2, 2004, statewide primary election after the 131-day deadline set forth in Section 9040 of the Elections Code shall be placed on the ballot, following all other ballot measures, in the order in which they qualified as determined by chapter number.

(c) Notwithstanding Section 13282 of the Elections Code, the public shall be permitted to examine the condensed statement of the ballot title for not more than eight days. Any voter may seek a writ of mandate for the purpose of requiring any statement of the ballot title, or portion thereof, to be amended or deleted only within that eight-day period.

(d) Notwithstanding any other provision of law, the Legislative Analyst is not required to submit his or her analysis of a ballot measure that must appear in a supplemental ballot pamphlet for the March 2, 2004, primary election to a committee for review.

(e) The Secretary of State shall include, in the ballot pamphlets mailed pursuant to Section 9094 of the Elections Code, the information specified in Section 9084 of the Elections Code regarding the bond act contained in Section 3 of this act. If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding this act to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall be mailed separately.

SEC. 6. (a) Notwithstanding any other provision of law, all ballots of the March 2, 2004, statewide primary election shall have printed thereon and in a square thereof, the words “Deficit Recovery General Obligation Bond Act of 2004,” and in the same square under those words, the following in 8-point type:

1 “This act provides for a bond issue of an amount not to
2 exceed fifteen billion dollars (\$15,000,000,000) for the
3 financing of the accumulated budget deficit.”
4

5 Opposite the square, there shall be left spaces in which the
6 voters may place a cross in the manner required by law to indicate
7 whether they vote for or against the act.

8 (b) Where voting in the election is done by means of voting
9 machines used pursuant to law in a manner that carries out the
10 intent of this section, the use of the voting machines and the
11 expression of the voters’ choice by means thereof are in
12 compliance with this section.

13 SEC. 7. If any provision of this act or application thereof is
14 held to be invalid, that invalidity shall not affect other provisions
15 or applications that can be given effect without the invalid
16 provisions or applications, and to this end the provisions of this act
17 are severable.

18 SEC. 8. Sections 1, 2, and 3 of this act shall become operative
19 only if both of the following occur:

20 (a) A constitutional amendment, specifying that bonds or other
21 indebtedness in excess of three hundred thousand dollars
22 (\$300,000) may be issued by the state pursuant to Article XVI of
23 the California Constitution for the purpose of financing the
24 accumulated state budget deficit, is submitted to and approved by
25 the voters at the March 2, 2004, statewide primary election.

26 (b) SCA 4 of the 2003–04 Fifth Extraordinary Session is
27 submitted to and approved by the voters at the March 2, 2004,
28 statewide primary election.

29 SEC. 9. This act is an urgency statute necessary for the
30 immediate preservation of the public peace, health, or safety
31 within the meaning of Article IV of the Constitution and shall go
32 into immediate effect. The facts constituting the necessity are:

33 In order to provide funds necessary to reduce the accumulated
34 budget deficit, it is necessary that this act take effect immediately.



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| 1 | |
| 2 | CORRECTIONS |
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| 4 | |
| 5 | |

